

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
LTV Steel Company, Inc.)	
)	
Defendant.)	
)	

COMPLAINT

Plaintiff, the United States of America, at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), alleges the following:

NATURE OF ACTION

1. This is a civil action for injunctive relief and imposition of civil penalties brought pursuant to Section 3008 of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. § 6928, for violations of the ground water monitoring requirements at 40 C.F.R. Part 265, Subpart F, and 329 IAC 3.1-10-1, the closure plan requirements at 40 C.F.R. § 265.112 and 329 IAC 3.2-10-1, the land disposal prohibitions at 40 C.F.R. §§ 268.7, 268.35 and 329 IAC 3.1-12-1, and the hazardous waste permitting requirements at 40 C.F.R. Part 270 and 3.1-13-1. This action arises from the defendant's generation and unlawful disposal of chromium-bearing hazardous waste in the course of its steel making operations in East Chicago, Indiana. The Complaint

also seeks an injunction to require the defendant to take corrective action to remedy releases of hazardous waste into the environment from defendant's facility.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Notice of the commencement of this action has been provided to the State of Indiana in accordance with 42 U.S.C. § 6928(a)(2).

4. Venue is proper in the Northern District of Indiana pursuant to 28 U.S.C. § 1391 because the violations complained of occurred in this district and defendant resides in this district.

DEFENDANT

5. Defendant LTV Steel Company, Inc. ("LTV") is a New Jersey corporation that maintains its principal office in Cleveland, Ohio. LTV owns and operates an integrated steel making plant located at 3001 Dickey Road, East Chicago, Indiana.

6. LTV is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

STATUTORY AND REGULATORY AUTHORITY

7. RCRA, 42 U.S.C. § 6901 et seq., establishes a comprehensive Federal regulatory program applicable to the

generation, transportation, storage, treatment and disposal of hazardous waste.

8. RCRA provides for a hazardous waste management program to be administered initially by the Administrator of U.S. EPA. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator may authorize a State to administer the RCRA hazardous waste management program in lieu of the Federal program when he or she deems the State program to be substantially equivalent.

9. The Administrator of U.S. EPA authorized the State of Indiana to carry out a hazardous waste program in lieu of many of the provisions of the Federal program on January 31, 1986. 51 Fed. Reg. 3953 (1986). These provisions include, but are not limited to, the standards applicable to generators of hazardous waste at 40 C.F.R. Part 262, the groundwater monitoring requirements at 40 C.F.R. Part 265, Subpart F, the closure requirements at 40 C.F.R. Part 265, Subpart G, and the hazardous waste permit program at 40 C.F.R. Part 270. The Administrator authorized the State of Indiana to carry out the regulations dealing with the land disposal restrictions at 40 C.F.R. §§ 268.35 and 268.40 in lieu of the Federal program, effective October 21, 1996. 60 Fed. Reg. 43018 (August 20, 1996).

10. Generators of hazardous waste and owners and operators of facilities located in Indiana that treat, store or dispose of

hazardous waste, must comply with the standards and requirements of 329 IAC Article 3.1.

11. These regulations are enforceable by the Federal government pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

12. Section 3001(a) of RCRA, 42 U.S.C. § 6921(a), requires the Administrator of U.S. EPA to develop and promulgate criteria for identifying the characteristics of hazardous waste and for listing hazardous waste. Section 3001(b)(1) of RCRA, 42 U.S.C. § 6921(b)(1), requires the Administrator to promulgate regulations identifying the characteristics of hazardous waste and listing particular hazardous wastes based on the criteria promulgated pursuant to Section 3001(a). These regulations have been promulgated and are codified at 40 C.F.R. Part 261. The State of Indiana has incorporated by reference the provisions of 40 C.F.R. Part 261 at 329 IAC 3.1-6-1.

13. Section 261.24 of the regulations governing the identification and listing of hazardous waste provide that a solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure ("TCLP"), the extract from a representative sample of the waste contains any of the contaminants listed in table 1 at concentrations equal to or greater than the respective value given in table 1. Table 1 indicates that chromium at a concentration of equal to or greater

than 5 mg/L is toxic and has an EPA Hazardous Waste Number of D007. 40 C.F.R. § 261.24. A solid waste that exhibits a characteristic of toxicity is a hazardous waste. 40 C.F.R. §§ 261.3 and 261.20. Prior to 1990, Section 261.24 required chromium toxicity to be determined using the Extraction Procedure ("EP"). Chromium is also identified as a hazardous constituent in Appendix VIII to Part 261.

14. Section 3004 of RCRA, 42 U.S.C. § 6924, requires U.S. EPA to promulgate regulations establishing performance standards applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste as may be necessary to protect human health and the environment. These standards are codified at 40 C.F.R. Parts 264 and 265 and include, among other things, requirements for ground water monitoring and closure. The State of Indiana has incorporated the standards at 40 C.F.R. Part 265 by reference at 329 IAC 3.1-10-1.

15. Section 265.90(a) of the ground water monitoring requirements in Subpart F, of 40 C.F.R. Part 265, requires the owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste to implement a ground water monitoring program in the uppermost aquifer underlying the facility. Section 265.90(b) requires the owner or operator to install, operate, and maintain a ground

water monitoring system which meets the requirements of Section 265.91, and to comply with Sections 265.92 through 265.94. This ground water monitoring program must be carried out during the active life of the facility, and for disposal facilities, during the post-closure care period as well.

16. Section 265.112(a) of the closure and post-closure regulations in Subpart G of 40 C.F.R. Part 265 requires the owner or operator of a hazardous waste management facility to have a written closure plan. Section 265.112(b) identifies the contents of the plan.

17. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), prohibits the treatment, storage or disposal of any hazardous waste except in accordance with a permit issued pursuant to this section. Section 3005(a) also requires U.S. EPA to promulgate regulations governing permits. These regulations are codified at 40 C.F.R. Part 270. The State of Indiana has incorporated by reference the provisions of 40 C.F.R. Part 270 at 329 IAC 3.1-13-1.

18. Section 3005(e)(1) of RCRA, 42 U.S.C. § 6925(e)(1), further provides that a facility that was in existence on November 19, 1980 may obtain "interim status" to continue operating until final action is taken by U.S. EPA or an authorized State with respect to its permit application, so long as the facility satisfies certain conditions. Those conditions include filing a timely notice with U.S. EPA, pursuant to Section

3010(a) of RCRA, 42 U.S.C. § 6930(a), that the facility is treating, storing, or disposing of hazardous waste and filing Part A of the application for a hazardous waste permit.

19. Section 3010 of RCRA, 42 U.S.C. § 6930, and its implementing regulations require all persons who generate, transport, treat, store or dispose of hazardous waste to notify U.S. EPA of such activity by August 18, 1980.

20. Section 3004(d), (e), (f), and (g), 42 U.S.C. § 6924(d), (e), (f), and (g), provide that after the dates specified in U.S. EPA's regulations, land disposal of specific wastes is prohibited unless the waste has complied with the pretreatment regulations promulgated by U.S. EPA pursuant to Section 3004(m) of RCRA, 42 U.S.C. § 6924(m). Section 3004(m) of RCRA requires the Administrator to promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste. The land disposal regulations ("LDR") promulgated pursuant to Section 3004 are found at 40 C.F.R. Part 268. The State of Indiana has incorporated by reference the provisions of 40 C.F.R. Part 268 at 329 IAC 3.1-12-1.

21. Effective August 8, 1990, land disposal of D007 wastes is prohibited except in accordance with the applicable treatment standards specified in subpart D of 40 C.F.R. Part 268.

40 C.F.R. § 268.35. Section 268.40(a) provides that a waste identified in the table "Treatment Standards for Hazardous Wastes" may be land disposed only if it meets the requirements found in the table. The treatment value for D007 waste in the table is 5.0 mg/L TCLP.

22. Pursuant to 40 C.F.R. § 268.7(a), a generator whose waste exhibits one or more of the characteristics set out at 40 C.F.R. Part 261, Subpart C, must test its waste or use knowledge of the waste to determine if the waste is restricted from land disposal.

23. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that the Administrator of U.S. EPA may commence a civil action for injunctive relief whenever he or she determines that any person is in violation of any of RCRA's hazardous waste management requirements. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and 40 C.F.R. Part 19 provide for the assessment of civil penalties up to 25,000 per violation for each day of violation that occurred prior to January 31, 1997, and \$27,500 per day for each violation that occurred on or after January 31, 1997 up to the date of judgment herein.

24. Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), provides that whenever the Administrator determines that there is or has been a release of hazardous waste into the environment from an interim status facility, the Administrator may commence a civil

action seeking an injunction to require that corrective action be undertaken.

General Allegations

25. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, on or about August 15, 1980, Youngstown Sheet and Tube Company and/or Jones and Laughlin Steel Corporation notified U.S. EPA that it generated and treated, stored or disposed of hazardous waste at the East Chicago plant.

26. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and 40 C.F.R. § 270.10, on or about November 14, 1980, Youngstown Sheet and Tube Company and/or Jones and Laughlin Steel Corporation submitted Part A of an application for a permit to treat, store or dispose of hazardous waste at the East Chicago plant (the "Facility").

27. By virtue of the notification to U.S. EPA and submission of the Part A application, the Facility was accorded "interim status" under Section 3005(e)(1) of RCRA, 42 U.S.C. § 6925(e)(1). Interim status allowed operation of the Facility pending final administrative disposition of the permit application. 40 C.F.R. § 270.70(a).

28. On or about November 13, 1985, U.S. EPA and/or the State of Indiana received notification from LTV that The LTV Corporation, the parent company of Jones and Laughlin Steel Corporation, acquired Republic Steel Corporation, merged

Jones and Laughlin Steel Corporation into Republic Steel Corporation, and changed the name of the surviving company to LTV Steel.

29. LTV operates roll shops within the No. 2 Tin Mill, 84-Inch Hot Strip Mill and No. 3 Sheet Mill at the East Chicago plant. These shops generally conduct surface finishing or grinding of mill rolls used to reduce steel slabs to coils.

30. Wastes consisting of coolant, that includes mostly water, and metal grindings that contain chromium are generated as part of the grinding and/or finishing of mill rolls at the roll shops.

31. Roll shop wastes are "solid wastes" within the meaning of Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and 40 C.F.R. § 261.2.

32. At least two (2) samples of roll shop waste from 1989, one (1) sample from 1991, two (2) samples from 1993, two (2) samples from 1996, and one (1) sample from 1997 that were analyzed by LTV using the EP or TCLP exceeded the toxic level for chromium in table 1 of 40 C.F.R. § 261.24.

33. At least four (4) samples of roll shop waste that were collected by U.S. EPA's contractor and analyzed by U.S. EPA in 1996 using the TCLP exceeded the toxic level for chromium in table 1 of 40 C.F.R. § 261.24.

34. The roll shop wastes described in paragraphs 32 and 33 are "hazardous wastes" as defined at 40 C.F.R. §§ 261.3(a) and 261.20(a), and 329 IAC 3.1-4 and are classified as D007 wastes in table 1 of 40 C.F.R. §261.24. Roll shop wastes are "hazardous wastes" within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

35. LTV is a "generator" of hazardous waste as defined at 40 C.F.R. § 260.10.

36. On at least one (1) occasion in 1989, one (1) occasion in 1991, two (2) occasions in 1993, four (4) occasions in 1996 and one (1) occasion in 1997, LTV placed roll shop wastes that exhibited the toxicity characteristic for chromium and thus are D007 hazardous wastes in the on-site landfill located in the north central section of the East Chicago facility and referred to as the Clark Materials Handling Area.

37. LTV is the owner and operator of the on-site landfill referred to as the Clark Materials Handling Area.

38. Placement of D007 wastes in the on-site landfill constitutes "disposal" within the meaning of Section 1004(3) of RCRA, 42 U.S.C. § 6903(3), and 40 C.F.R. § 260.10, and "land disposal" within the meaning of Section 3004(k) of RCRA, 42 U.S.C. § 6924(k).

39. LTV is the "owner" and "operator" of a hazardous waste "treatment, storage, or disposal facility" as those terms are

defined at Section 1004(3), (33), and (34) of RCRA, 42 U.S.C. § 6903(3), (33), and (34), and at 40 C.F.R. § 260.10.

40. Upon information and belief, LTV is no longer disposing of roll shop wastes in the on-site landfill.

First Claim for Relief

41. The allegations in paragraphs 1-40 are hereby realleged and incorporated by reference.

42. As an owner or operator of a landfill used to manage hazardous waste, LTV is subject to the ground water monitoring requirements at 40 C.F.R. § 265.90(a) and (b) and 329 IAC 3.1-10-1.

43. LTV has failed to implement the ground water monitoring program required at 40 C.F.R. § 265.90(a) and (b) and 329 IAC 3.1-10-1 at the on-site landfill.

44. LTV's failure to implement a ground water monitoring program is a violation of Section 3004(p) of RCRA, 42 U.S.C. § 6924(p), and the requirements at 40 C.F.R. § 265.90(a) and (b) and 329 IAC 3.1-10-1.

45. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and 40 C.F.R. Part 19, LTV is subject to a civil penalty not to exceed \$25,000 per day per violation that occurred prior to January 31, 1997 and \$27,500 per day for each violation that occurred on or after January 31, 1997.

46. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), LTV is subject to injunctive relief to prevent further violations of RCRA and its implementing regulations.

47. Injunctive relief is necessary to restrain LTV from continuing to violate the ground water monitoring requirements of RCRA and the applicable Federal and Indiana regulations, and to compel LTV to implement a ground water monitoring program.

Second Claim for Relief

48. The allegations in paragraphs 1-40 are hereby realleged and incorporated by reference.

49. As the owner and operator of a hazardous waste management facility, LTV is subject to the closure plan requirements at 40 C.F.R. § 265.112 and 329 IAC 3.1-10-1 with respect to the on-site landfill.

50. LTV has failed to prepare a closure plan for its landfill in accordance with the requirements at 40 C.F.R. § 265.112 and 329 IAC 3.1-10-1.

51. LTV's failure to prepare a closure plan for its landfill is a violation of the requirements at 40 C.F.R. § 265.112 and 329 IAC 3.1-10-1.

52. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and 40 C.F.R. Part 19, LTV is subject to a civil penalty not to exceed \$25,000 per day per violation that occurred

prior to January 31, 1997 and \$27,500 per day for each violation that occurred on or after January 31, 1997.

53. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), LTV is subject to injunctive relief to prevent further violations of RCRA and its implementing regulations.

54. Injunctive relief is necessary to restrain LTV from continuing to violate the closure plan requirements of RCRA and the applicable Federal and Indiana regulations, and to compel LTV to develop a closure plan.

Third Claim for Relief

55. The allegations in paragraphs 1-40 are hereby realleged and incorporated by reference.

56. As an owner or operator of a hazardous waste treatment, storage, or disposal facility, LTV is subject to the permitting requirements at 40 C.F.R. Part 270 and 329 IAC 3.1-13.

57. Part A of the permit application for the East Chicago facility did not include the on-site landfill as a process to be used for storage, treatment or disposal of hazardous waste.

58. LTV has never applied for or received a RCRA permit to dispose of hazardous waste in its on-site landfill pursuant to 40 C.F.R. Part 270 or 329 IAC 3.1-13.

59. LTV's failure to obtain a permit is a violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the permitting requirements at 40 C.F.R. Part 270 and 329 IAC 3.1-13.

60. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and 40 C.F.R. Part 19, LTV is subject to a civil penalty not to exceed \$25,000 per day per violation that occurred prior to January 31, 1997 and \$27,500 per day for each violation that occurred on or after January 31, 1997.

Fourth Claim for Relief

61. The allegations in paragraphs 1-40 are hereby realleged and incorporated by reference.

62. Since November 1993, LTV placed D007 wastes from its roll shops in the on-site landfill on at least six (6) occasions.

63. LTV failed to treat the D007 wastes placed in the landfill to meet the treatment standards for D007 wastes specified in the table "Treatment Standards for Hazardous Waste" in subpart D of 40 C.F.R. Part 268.

64. LTV's failure to treat the D007 wastes in accordance with the applicable treatment standards prior to land disposal before October 21, 1996, constitutes a violation of Section 3004 of RCRA, 42 U.S.C. § 6924, and 40 C.F.R. § 268.35.

65. LTV's failure to treat the D007 wastes in accordance with the applicable treatment standards prior to land disposal on or after October 21, 1996, constitutes a violation of Section 3004 of RCRA, 42 U.S.C. § 6924, 40 C.F.R. § 268.35 and 329 IAC 3.1-12-1.

66. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and 40 C.F.R. Part 19, LTV is subject to a civil penalty not to exceed \$25,000 per day per violation that occurred prior to January 31, 1997 and \$27,500 per day for each violation that occurred on or after January 31, 1997.

Fifth Claim for Relief

67. The allegations in paragraphs 1-40 are hereby realleged and incorporated by reference.

68. As a generator of D007 waste, LTV is required by 40 C.F.R. § 268.7(a) to test its waste or use knowledge of the waste to determine if the waste is restricted from land disposal under 40 C.F.R. Part 268.

69. LTV failed to test or use its knowledge of a waste that exhibits a characteristic set out at 40 C.F.R. Part 261, Subpart C (D007) to determine if the waste was restricted from land disposal under 40 C.F.R. Part 268 as required by 40 C.F.R. § 268.7(a).

70. LTV's failure to test or use its knowledge of a waste to determine if the waste was restricted from land disposal under 40 C.F.R. Part 268 before October 21, 1996, constitutes a violation of 40 C.F.R. § 268.7(a).

71. LTV's failure to test or use its knowledge of a waste to determine if the waste was restricted from land disposal under

40 C.F.R. Part 268 on or after October 21, 1996, constitutes a violation of 40 C.F.R. § 268.7(a) and 329 IAC 3.1-12-1.

72. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and 40 C.F.R. Part 19, LTV is subject to a civil penalty not to exceed \$25,000 per day per violation that occurred prior to January 31, 1997 and \$27,500 per day for each violation that occurred on or after January 31, 1997.

73. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), LTV is subject to injunctive relief to prevent further violations of RCRA and its implementing regulations.

74. Injunctive relief is necessary to restrain LTV from continuing to fail to determine if its waste is restricted from land disposal under Part 268 and to compel LTV to determine which of its roll shop wastes are restricted from land disposal.

Sixth Claim for Relief

75. The allegations in paragraphs 1-40 are hereby realleged and incorporated by reference.

76. LTV's Facility in East Chicago was authorized to operate as an interim status facility under the provisions of Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

77. Pursuant to authority duly delegated to him by the Regional Administrator of U.S. EPA, Region 5, the Chief, Enforcement and Compliance Assurance Branch in the Waste, Pesticides and Toxics Division, U.S. EPA, Region 5, has

determined that there has been a release of hazardous waste/hazardous constituents (chromium) from the Facility into the environment. A copy of this determination is attached hereto as Exhibit A.

78. Corrective action to identify precisely all hazardous wastes, their sources, and the extent and degree of contamination is necessary to address the release of hazardous waste/hazardous constituents into the environment. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), LTV is liable to perform such corrective action.

79. Injunctive relief is necessary to require LTV to perform the necessary corrective action.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the United States of America, respectfully prays this Court for:

1. A permanent injunction restraining and preventing defendant from violating the requirements of RCRA and its implementing regulations.

2. A permanent injunction requiring defendant to comply with all applicable ground water monitoring requirements of RCRA and its implementing regulations.

3. A permanent injunction requiring defendant to comply with all applicable closure plan requirements of RCRA and its implementing regulations.

4. A permanent injunction requiring defendant to determine if its waste is restricted from land disposal under RCRA and its implementing regulations.

5. An injunction requiring defendant to conduct a RCRA Facility Investigation and, if necessary, a Corrective Measures Study, and implement the remedy selected by U.S. EPA to address the release of hazardous waste/hazardous constituents from the Facility.

6. Judgment imposing upon defendant civil penalties for its past violations in an amount not to exceed \$25,000 per day per violation that occurred prior to January 31, 1997 and \$27,500 per day for each violation that occurred on or after January 31, 1997.

7. Judgment awarding plaintiff the costs of this action and such further relief as this Court may deem appropriate.

Respectfully submitted,

LOIS J. SCHIFFER
 Assistant Attorney General
 Environment and Natural Resources
 Division
 U.S. Department of Justice
 9th & Constitution Ave., N.W.
 Washington, D.C. 20530

JON E. DEGUILIO
United States Attorney
Northern District of Indiana

Assistant United States Attorney
Northern District of Indiana

OF COUNSEL:

CHRISTINE M. LISZEWSKI
Associate Regional Counsel
United States Environmental
Protection Agency, Region 5
77 West Jackson Boulevard, C-14J
Chicago, Illinois 60604-3590